

REMARKS

Claims 1, 4-6, 16, 18, 19, 23, 25, 26 and 28 have been amended, and claims 2, 3, 17, 24, 27 and 29 have been cancelled herein. Hence, claims 1, 4-16, 18-23, 25, 26 and 28 are currently pending. Applicants respectfully request reconsideration of the captioned application in view of the foregoing amendments and the following remarks.

Specification

The specification has been amended to correct a word processing error.

Election/Restriction

The office action stated the application contains claims directed to two distinct species: Species 1 – Figures 4 & 6, and Species 2 – Figures 5 & 7. The office action further notes that during a telephone conversation between the Examiner and the undersigned, a provisional election was made without traverse to prosecute the invention of Species 2, Figures 5 and 7, claims 1-10, 12-21, 23, 24, 26-29. The office action is correct in that Species 2, Figures 5 and 7 was telephonically elected; Applicant affirms the election of Species 2, Figures 5 and 7. However, claims 11, 22 and 25 read on Species 2, *not* Species 1. Thus, claims 11, 22 and 25 should not have been withdrawn.

Referring to Figure 5, paragraph [0027] of the specification states,

[0027] As shown in Figure 5, the stop portion 142 of the notch 132 defines an angle θ with the longitudinal axis 140. The angle θ is an obtuse angle when determined relative to the side of the locking member 120b where the spout opening 130 is located.

Each of claims 11, 22 and 25 includes such a stop portion. For example, claim 11 recites, “the stop portion of the notch and the longitudinal axis of the locking member define an obtuse angle relative to the spout opening.”

Additionally, claims 10 and 19-21 read on Species 2. Claim 27 as originally presented further reads on Species 1, though it has been canceled since claim 26 has been amended to incorporate the limitations of claim 27. Thus, claim 26 now reads on Species 2.

Moreover, the office action stated that no claims are generic. Applicants believe that all of the remaining claims are generic to either Species 1 or Species 2 as they do not specifically recite the details of the notch causing the locking member to move to the locked position or an obtuse angle.

Applicant therefore respectfully submits that, since Species 2 was elected, claims 11, 22 and 25 should be included for examination.

Claim Rejections – 35 USC § 102

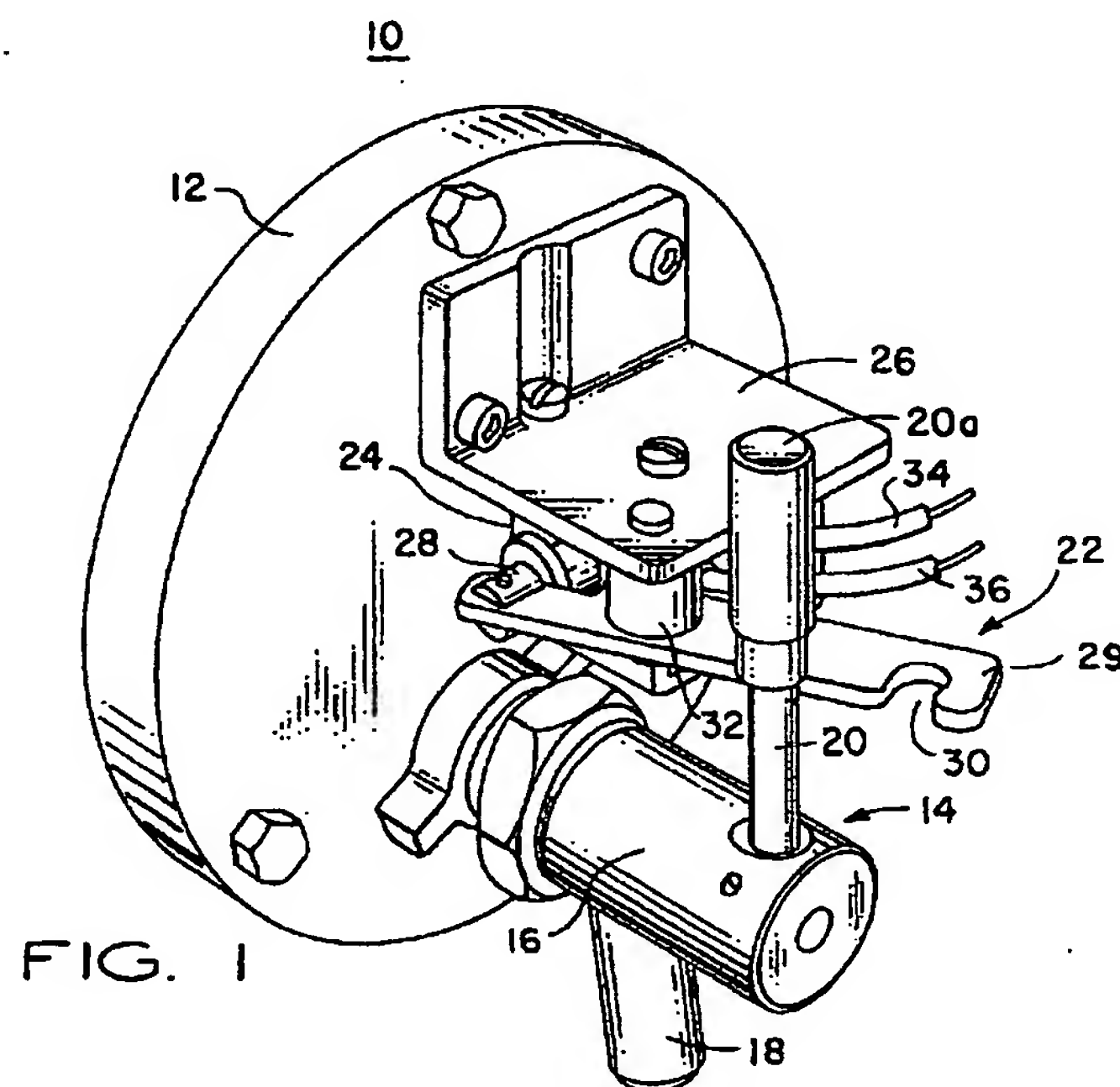
The office action rejected claims 1-10, 12-21, 23, 24 and 26-29 under 35 USC 102(b) as allegedly being anticipated by U.S. Patent 5,487,493 to McNabb (“McNabb”). Applicant respectfully traverse this rejection.

Claim 1 has been amended to incorporate the subject matter of claims 2 and 3, which have been canceled. Claims 4-6 have been amended to correct their dependency after the deletion of claims 2 and 3. Claim 1 is therefore intended to represent claim 3 in independent form. As such, claim 1 includes “a locking member defining a spout opening therethrough, the spout opening receiving the spout such that the locking member is rotatable about the spout.” Claim 28 has been amended to include the subject matter of claim 29, such that claim 28 is now

intended to represent original claim 29 in independent form. Claim 29 has been canceled. The method of claim 28 now includes “inserting a spout of the faucet through a spout opening in a locking member such that the locking member is rotatable about the spout.”

MPEP 2131 notes that, “to anticipate a claim, the reference must teach every element of the claim” and further, citing *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990), “The elements must be arranged as required by the claim.” Regarding original claim 3, the office action states, “McNabb further discloses the locking member (22) that is rotatable (Fig 1) about the spout (16).” Page 5, lines 3-4.

Figure 1 of McNabb is reproduced below:



Referring to Figure 1 of McNabb, “Valve 14 includes a valve body 16, a dispensing faucet 18 depending downwardly from valve body 16 and a manually operable lever member 20 mounted for tilting movement.” Col. 4, ll. 12-15. McNabb further discloses a security device 22

that includes a latch member 29. “Pivot mounting member 32 is carried on mounting bracket 26 for mounting latch member 29 for pivotal movement about a vertical axis.” Col. 4, ll. 26-28.

Thus, latch member 29 of McNabb does not include an opening that receives a spout. In McNabb, the dispensing spout 22 is on the opposite side of the valve 14 – it depends downwardly from the valve body. It appears that, if the latch member 29 of McNabb rotated about the dispensing faucet 18 as shown in Figure 1 reproduced above, it would not function to lock the lever as described. In fact, in the rejections based on 35 USC 103, the office action admits that McNabb fails to disclose this claim element: “McNabb ... does not show the first end of the locking member defines [sic] a spout opening extending therethrough for receiving a liquid dispensing spout....” Office action at page 9, lines 1-4.

Since McNabb fails to disclose an opening through a locking member that receives a spout, it cannot anticipate claim 1, or any of the claims dependent thereon. Claims 1 and 4-15 are thus believed to be in condition for allowance. Similarly, McNabb cannot anticipate claim 28 because it does not disclose a method including inserting a spout through a spout opening in a locking member so it is also believed proper for allowance.

Claim 16 has been amended to incorporate the subject matter of claim 17, and claim 17 has been canceled. Claims 18 and 19 have been amended to correct their dependencies. While the office listed claim 17 in the rejection under 35 USC 102(b), no reference to claim 17 was included in the discussion of McNabb. Claim 16 is believed to be in condition for allowance as set forth in the response to the rejections under 35 USC 103(a) below. Claims 18-22 ultimately depend from claim 16 and as such, are also believed to be allowable.

Claim 23 has been amended to include the subject matter of claim 24, which has been canceled. Claim 25 has been amended to correct its dependency accordingly. Claim 24 is thus intended to represent claim 24 in independent form. Regarding claims 23 and 24, the office action states, "McNabb further discloses a locking member (22) defining a generally cylindrical bore (40)...." Page 7, lines 1-2. The bore 40 is shown in Figure 6 of McNabb, which is reproduced below:

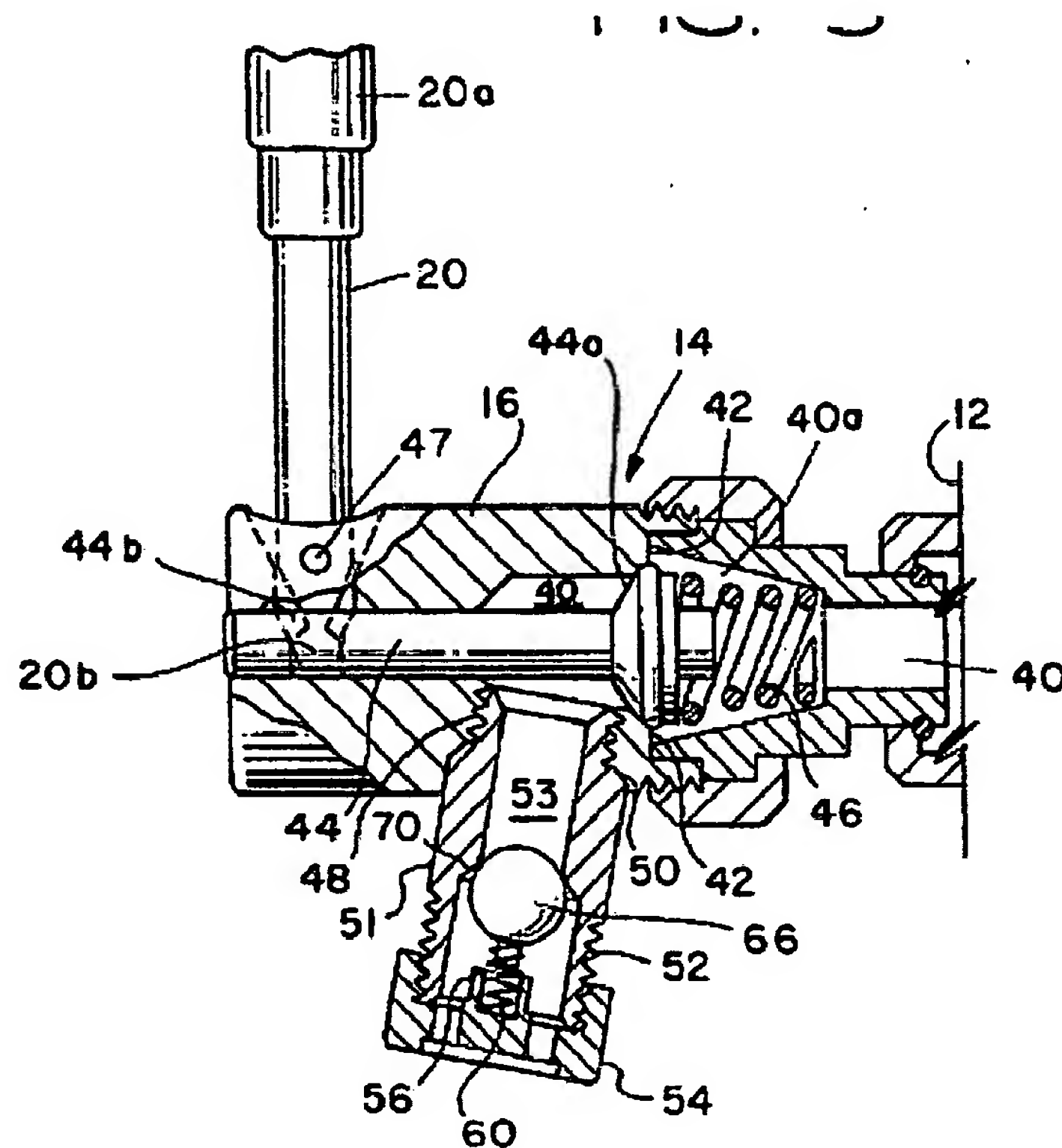


FIG. 6

Regarding the bore 40, McNabb notes, "*valve body 16 has a generally elongated bore 40....*" Col. 4, ll. 35-36 (emphasis added). As illustrated and described in McNabb, the bore 40 cited in the office action is defined by the valve body, not the locking member. The office action's recitation of elements disclosed in McNabb thus fails to identify each element of the

claim, arranged as required by the claim. Claim 23, as well as claim 25 dependent there on, is therefore believed to be proper for allowance.

Claim 26 has been amended to incorporate the subject matter of claim 27, and hence, includes “second means for automatically locking the lever in response to movement of the lever from the open position to the closed position.”

Claim 26 is presented in means-plus-function form as allowed under 35 USC 112, paragraph 6, which states, “such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.” Regarding the means for automatically locking the lever in response to movement of the lever, the specification teaches,

“Additionally, the locking member 120b provides an automatic locking feature. The notch 132 of the locking member 120b is shaped such that movement of the lever 116 from the open position towards the closed position closer to the spout 114 (as illustrated in Figure 7) causes the locking member 120b to move to the locked position. In the exemplary locking member 120b, this automatic locking feature is achieved via a stop portion 142 of the notch 132, which extends from the radiused portion 134 to an outer edge of the locking member 120b. When the lever 116 is moved from the open to the closed position, the stop portion 142 engages the lever 116, and the locking member 120b slides along the stop surface 142 as the lever 116 moves towards the spout 114 until it seats in the radiused portion 134 when the lever 116 reaches the closed position. The shape of the notch 132 facilitates the movement of the locking member 120b caused by the moving lever 116. As shown in Figure 5, the stop portion 142 of the notch 132 defines an angle θ with the longitudinal axis 140. The angle θ is an obtuse angle when determined relative to the side of the locking member 120b where the spout opening 130 is located.”

Specification at paragraph [0027]. The lever engages the stop portion of the notch as it returns to the closed position, which is shaped such that movement of the lever causes the locking member to move to the locked position.

First, the function associated with the second means element is “automatically locking the lever in response to movement of the lever from the open position to the closed position.”

Regarding the securing device 22 disclosed in McNabb, McNabb states, “a securing device 22 is

provided for securing lever member 20 in response to a predetermined condition.” Col. 4, ll. 18-19. The office action does not identify where in McNabb “movement of the lever” is described as this predetermined condition.

Moreover, to anticipate claim 26, McNabb must disclose structure that accomplishes the recited function corresponding to the means for performing the function that is recited in the claim – not just any means for performing the function. *See* MPEP 2114. McNabb teaches activating the securing device using “an electrically activatable solenoid 24.” Col. 4, l. 20. The office action fails to identify where McNabb discloses a stop portion of the locking device that engages the lever to accomplish the recited function.

Therefore, claim 26 is believed to be allowable over McNabb.

Claim Rejections – 35 USC § 103

The office action rejected claim 15 under 35 USC 103(a) as allegedly being unpatentable over McNabb in view of U.S. Patent 5,971,354 to Ecklund (“Ecklund”). Applicant respectfully traverse this rejection. Claim 15 ultimately depends from claim 1 and is therefore allowable for at least the same reasons.

The office action rejected claims 17-21 and 29 under 35 USC 103(a) as allegedly being unpatentable over McNabb in view of U.S. Patent 6,648,178 to Grunewald (“Grunewald”). Applicant respectfully traverse this rejection.

Claim 16 has been amended to incorporate the subject matter of claim 17. Claim 16 thus is now intended to represent claim 17 in independent form. Claim 16 further recites the locking member being movable to release the dispensing lever by rotating the locking member about the

spout. MPEP 2143.03 notes, “To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” The office action admits that McNabb fails to disclose a spout opening in the locking member. The office action alleges Grunewald teaches a spout opening for liquid dispensing spout, but the office action does not provide a specific citation to such a disclosure in Grunewald.

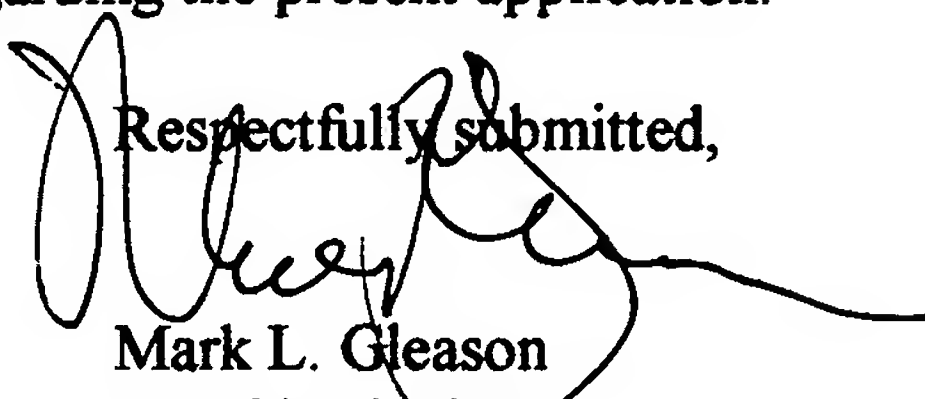
Each of the taps illustrated in the Figures of Grunewald includes a nozzle (26 in Figures 1 and 2 and 38, 40 and 42 in Figure 9, for example). In each of these illustrated embodiments, the nozzle extends below the tap, with a tap handle extending above the tap. To the extent that the tap block 102 has a “spout opening,” the office action fails to provide a citation as to where Grunewald discloses the spout received in the spout opening such that the locking member is rotatable about the spout to release the locking member.

It therefore appears that the combination of McNabb and Grunewald fails to disclose each element of claim 16. Claim 16, and claims 18-22 dependent thereon, are thus proper for allowance. Claim 29 has been canceled.

Conclusion

As evidenced by the foregoing amendments and remarks, Applicants have made a genuine effort to address each concern raised in the office action. All of the pending claims are believed to be in condition for allowance. The Examiner is invited to contact the undersigned attorney with any concerns or questions regarding the present application.

Respectfully submitted,



Mark L. Gleason
Reg. No. 39,998
Attorney for Applicant

LOCKE LIDDELL & SAPP LLP
600 Travis, #3400
Houston, Texas 77002-3095
952-474-3701
mgleason@lockeliddell.com
Date: 4/12/05